

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
(DETROIT)**

In Re:

Dailey Law Firm PC

Debtor.

Case No. 23-45970-mlo
Chapter 11
Hon. Maria L. Oxholm

**MOTION AND INCORPORATED BRIEF IN SUPPORT BY COURT
APPOINTED RECEIVER JOHN POLDERMAN, ESQ. TO CONFIRM
AUTOMATIC STAY IS NOT IN EFFECT OR IN THE ALTERNATIVE TO
LIFT STAY AS TO THE INTERPLEADER CASE**

John Polderman, Esq., as pre-petition Receiver of the assets of the Dailey Law Firm PC (“DLF”) (the “Receiver”), by and through the undersigned counsel, hereby moves (the "Motion") this Court for an order determining that the automatic stay provided section 362 of the United States Code (11 U.S.C. §§ 101 *et seq.*) (the “Bankruptcy Code”) does not prevent liquidation and distribution of certain funds held in DLF’s IOLTA trust account or in the alternative that the stay is lifted as to the disposition allocation and payment of the funds.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334.
2. This is a core proceeding pursuant to 28 U.S.C. §157(B)(2)(A).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.

FACTUAL BACKGROUND

4. The Wayne County Circuit Court appointed the Receiver over the assets of DLF, as well as the owner and sole shareholder of the Debtor, Brian Dailey in an interpleader action captioned *The Dailey Law Firm vs. Jody Ingram et. al.*, case no. 21-007081 (“Interpleader Case”) (See **Exhibit A**, Order Appointing Receiver and **Exhibit B**, Complaint).

5. As part of a settlement of a client’s personal injury case, DLF claimed to be holding no-fault insurance and disability proceeds in the amount of \$166,135.40 in its client trust account for payment to various medical providers.

6. However, as the initial settlement amount was \$600,000, the interpleader defendants asked for an accounting of the settlement proceeds.

7. The initial accounting from The Dailey Law Firm revealed a number of problems:

- a. Under relevant personal injury protection law, Brian Dailey and the Dailey Law Firm cannot take a 1/3 fee on amounts the insurer voluntarily pays to providers. Thus, the Dailey Law Firm’s fees should have been calculated by taking the \$600,000, subtracting \$2,404.68 in case expenses (unproven but plausible) and taking 33% of the rest. That would have been \$199,198.44 in fees + \$2,404.68 in expenses = \$201,603.12 to DLF.

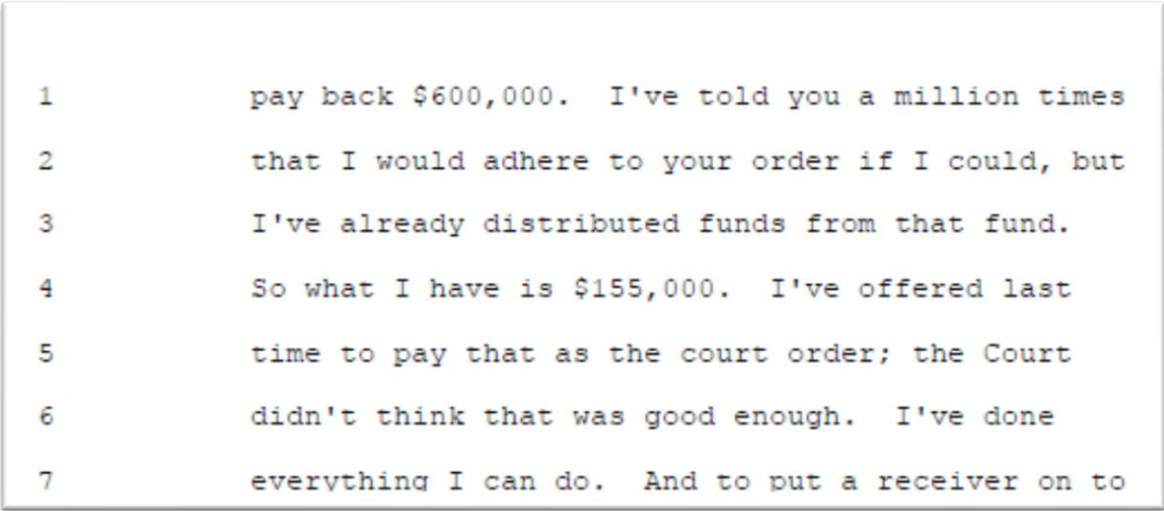
- b. Instead, he calculated his fee based on an extra \$97,146.45 voluntarily paid to pay himself-- an extra \$32,382.15. This is wrong.
- c. Next, he allegedly paid two of the medical providers \$51,500 but ignored all the other providers. Normally, if there isn't going to be enough to pay all providers there is a motion filed under MCL 500.3112 to have the trial court allocate the settlement among the providers, the attorney, and the client. Brian Dailey and DLF didn't do this.
- d. Next, instead of paying the providers (so as to protect the client from collections), he paid himself for alleged litigation over a disability insurance dispute. Brian Dailey claimed to have had \$11,000 in expenses (not documented) and paid himself that plus \$148,379.33 for a total payment of \$159,379.33. But his fee, if warranted at all, was not calculated correctly. He paid himself 1/3 of the present value of all his client's future disability payments. But those payments were reduced when his client received Social Security Disability, and pursuant to applicable law (42 USC 406, Section 206(a)(1)), he can't take more than a \$7,200 fee on getting such benefits (if he had anything to do with

that at all).

- e. In sum, Brian Dailey and DLF paid themselves too much and they took it from a fund that was only there because they didn't pay the providers as they should have.

8. After numerous machinations, the Wayne County Circuit Court ordered The Dailey Law Firm to pay back the \$600,000 settlement and the funds to be placed in escrow (See **Exhibit C**, Order).

9. Brian Dailey and The Dailey Law Firm refused to return the \$600,000, and claimed that at most, only \$155,000 of the original \$600,000 existed in the IOLTA trust account ("Interpleader Funds") (See **Exhibit D**, Hearing Transcript):



1 pay back \$600,000. I've told you a million times
2 that I would adhere to your order if I could, but
3 I've already distributed funds from that fund.
4 So what I have is \$155,000. I've offered last
5 time to pay that as the court order; the Court
6 didn't think that was good enough. I've done
7 everything I can do. And to put a receiver on to

10. As a result, the Wayne County Circuit Court appointed the Receiver to investigate and account for the \$600,000 in missing client funds.

11. To date, Brian Dailey and DLF have failed and refused to turnover the

Interpleader Funds.

Law And Argument

The IOLTA Funds

12. Michigan Rules of Professional Conduct section 1.15(c) and (d) provide that:

(c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(d) A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.

13. Section 541(a) of the Bankruptcy Code states in part that the bankruptcy estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." Notwithstanding the scope of the language used in § 541(a), the estate's legal and equitable interests in property are no higher or better than those of the debtor. See *In re Engman*, 395 B.R. 610, 617 (Bankr. W.D. Mich. 2008).

14. Property interests in bankruptcy are created and defined by state law. *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979).

15. Funds held by in an attorney's client trust account are not property of the bankruptcy estate. *Alarmex Holdings, LLC v. Gowan (In re Dreier LLP)*, 527 B.R. 126, 134 (S.D.N.Y. 2014).

16. Debtor's own bankruptcy schedules reflect the fact that it does not claim an interest in any funds held in its IOLTA account (See Dkt # 43, pages 4-5).

17. Despite not claiming an interest in the funds, and representing to the Wayne County Circuit Court that it was prepared to turn over the Interpleader Funds in the Interpleader Case, DLF has failed to release the Interpleader Funds.

The Interpleader Case

18. DLF is the Plaintiff in the Interpleader Case.

19. The Interpleader Case, among other things seeks an adjudication of the rights of various claimants to the Interpleader Funds.

20. DLF does not have an interest in the Interpleader Funds, therefore the Interpleader Case should proceed so as to allow the Wayne County Circuit Court to adjudicate the rights of the various claimants to the Interpleader Funds.

21. Section 362(a) of the Bankruptcy Code provides an automatic stay of

(1) "the commencement or continuation . . . to recover a claim against the debtor that arose before the commencement of the case . . . ;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title

22. The Interpleader Case has absolutely no impact on the Debtor. There is no obtaining possession of property of the estate or any act to collect, assess, or recover a claim against Debtor.

23. Alternatively, to the extent the Court determines that the automatic stay applies to the relief requested by the Receiver, cause exists in this case for the Court to grant the Receiver relief from the automatic stay.

24. Section 362(d)(1) of the Bankruptcy Code provides that “on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section . . . for cause.” Because the Bankruptcy Code does not define “cause,” courts have discretion to determine what constitutes “cause” on a case-by-case basis based on the totality of the circumstances. *In re New York Med. Grp., P.C.*, 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001) (citing *In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990)); *Matter of Gatke Corp.*, 117 B.R. 406, 409 (Bankr. N.D. Ind. 1989) (citing *In re Boomgarden*, 780 F.2d 657, 660 (7th Cir. 1985)). See also *Little Creek Dev. Co. v. Commonwealth Mortgage Corp.* (In re Little Creek Dev. Co.), 779 F.2d 1068, 1072 (5th Cir. 1986) (discussing the inherent balancing required for the court’s determination of whether a stay should be lifted under § 362(d)) (internal citations omitted).

25. As the movant, the Receiver has the initial burden to show that cause exists, but any party opposing the relief has the ultimate burden of disproving the existence of cause. *In re New York Med. Grp., P.C.*, 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001) (citing 11 U.S.C. § 362(g)).

26. Courts have developed a list of factors to consider when a party is seeking relief to continue litigation in another forum, including: (i) whether the relief will result in a partial or complete resolution of the issues; (ii) the lack of any connection with or interference with the bankruptcy case; (iii) whether the foreign proceeding involves the debtor as a fiduciary; (iv) whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases; (v) whether the action essentially involves third parties and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (vi) whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties; (vii) whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (viii) whether the movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (ix) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (x) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (xi) the impact of the stay on the parties and the balance of the hurt. *In re Armstrong & Guy Law Office, LLC*, 2007 WL 4571152, at 1-2 (Bankr. S.D. Miss. Dec. 21, 2007) (citing *In re Curtis*, 40B.R. 795, 799 (Bankr. D. Utah 1984)). See also *In re United Imports, Inc.*, 203 B.R. 162, 166– 167 (Bankr. D. Neb.1996) (considering (i)

judicial economy; (ii) trial readiness; (iii) the resolution of preliminary bankruptcy issues; (iv) the creditor's chance of success on the merits; (v) the cost of the defense or other potential burden to the bankruptcy estate; and (vi) the impact of the litigation on other creditors, in the context of a request to continue a non-bankruptcy judicial action).

27. Not all factors will be relevant in every case. *Armstrong*, 2007 WL 4571152, at 2 (citing *In re Cook*, 232 B.R. 554, 557 (Bankr. D. Conn. 1999)). Additionally, these factors need not be assigned equal weight, and only those factors relevant to the particular case need to be considered. *In re U.S. Brass Corp.*, 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (citing *In re Keene Corp.*, 171 B.R. 180 (Bankr. S.D.N.Y. 1994)).

28. In the context of the pending Interpleader Case in the Wayne County Circuit Court, the foregoing factors weigh heavily in favor of this Court granting the Receiver's request.

29. First, rulings by the State Court would result in a resolution of the disposition of the Interpleader Funds and bring closure to a case that has been ongoing for several years. It is time for the complete resolution of this issue for the claimants to the funds.

30. Second, a continuation of the Interpleader Case would have absolutely no impact on the Debtor or this action. While there have been assertions, pre-

bankruptcy, that a counter claim could be filed against DLF in the Interpleader Case, the Receiver is simply proposing that the stay be lifted to allow the disposition and allocation of the funds. To the extent that there are claims or counterclaims against DLF, those would continue to be stayed. Accordingly, allowing the Wayne County Circuit Court to rule on the disposition and allocation of the Interpleader Funds would have no impact on this case.

31. Third, the Interpleader Case does arguably involve Debtor as a fiduciary as he was holding funds on behalf of his clients. However, to the extent those funds are turned over to the Receiver, this issue is moot and the Debtor is only functioning as a trustee or custodian of the Interpleader Funds.

32. Fourth, allowing the Interpleader Case to continue, subject to the conditions outlined herein, would not prejudice the interests of creditors or any other interested parties.

33. Fifth, the allocation and distribution of the Interpleader Funds would not result in any sort of judicial lien avoidable by Debtor under section 522(f) of the Bankruptcy Code. No lien would be created at all.

34. Sixth, judicial economy would best be served by allowing the Wayne County Circuit Court to administer and determine the ultimate recipients of the Interpleader Funds. There is no reason the Wayne County Circuit should not go forward with ruling on the ultimate recipients of the Interpleader Funds and

determine their respective rights.

35. Based on the foregoing factors, there is good reason to grant the Receiver's requested relief and allow to allow the Interpleader Case to continue to allow the Wayne County Circuit Court to hear motions and enter orders as to the disposition, allocation and payment of the Interpleader Funds.

Conclusion

WHEREFORE the Receiver respectfully requests that an Order be entered confirming that the automatic stay is not in effect and that the Interpleader Funds be turned over to the Receiver for administration in the Interpleader Case and that the Interpleader Case continue to allow the Wayne County Circuit Court to hear motions and enter orders as to the disposition, allocation and payment of the Interpleader Funds.. A proposed order is attached hereto as **Exhibit E**.

Respectfully submitted,

**SIMON PLC ATTORNEYS &
COUNSELORS**

/s/ John Polderman

John Polderman (P65720)

Court Appointed Receiver

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Troy, MI 48084

Phone: 248-720-0290

jpolderman@simonattys.com

Dated: July 26, 2023

EXHIBIT “A”

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DAILEY LAW FIRM, PC,

Plaintiff/Counter-Defendant

v.

MICHIGAN SPINE AND PAIN,
Defendant/Counter-Plaintiff

Case No. 21-007081-CZ

Hon. Adel Harb

AND

JODY INGRAM; INTEGRATED COUNSELING
SERVICES; SUMMIT PSYCHIATRIC SERVICES;
CAPS CONSULTING, L.L.C.; TOTAL TOXICOLOGY;
MED TRUST L.L.C.; OPEN MRI OF LIVONIA;
AMERICAN SPECIALTY PHARMACY D/B/A ASP
CARES; MI IMAGING; PAIN ASSOCIATES OF
MICHIGAN; CRAIG PEPPLER, D.O.; HENRY FORD
HEALTH SYSTEM; BLUE CROSS BLUE SHIELD
OF MICHIGAN; HEALTHCARE IMAGING PARTNERS;
KRANS REHAB, L.L.C.; SPECTRUM REHABILITATION;
ASSOCIATED ORTHOPEDICS OF DETROIT; MICHIGAN
SPINE AND PAIN; MICHIGAN NEURO OPHTHALMOLOGY;
BINSON'S HOME HEALTHCARE; LABCORP;
PERFORMANCE ORTHO; METRO DETROIT
ENDOCRINOLOGY; MICHIGAN CRNAS STAFFING,
LLC; SUSAN NELSON; ATI PHYSICAL THERAPY,

Defendants

AND

MICHIGAN SPINE AND PAIN, a DBA of
MICHIGAN REHABILITATION PHYSICIANS, PLC,

Counter/Third Party Plaintiff

v.

BRIAN T. DAILEY,

Third Party Defendant

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William D Savage (P82146)
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ORDER APPOINTING COURT APPOINTED RECEIVER

At a session of said Court held on 6/26/2023,
in the County of Wayne, State of Michigan

Present: Hon. Adel Harb

This matter having come before the Court pursuant to Defendant Ingram's Motion for Entry of Order compelling Plaintiff Dailey Law Firm, PC and Third party Defendant Brian Dailey, individually to show cause why they should not be held in contempt of Court for failure to comply with Court orders dated February 27, 2023, and May 12, 2023, both of which require Dailey and the Dailey Law firm to interplead the sum of Six Hundred Thousand Dollars (\$600,000.00) into an escrow account created by Robert S. Drazin, said account to be under the control of the Court (hereinafter referred to as "the Court's Orders"); Dailey and the Daily Law firm having failed to comply with this Court's orders

regarding the same, by failing to interplead any funds; a request having been made by Defendants in this matter for the appointment of a Receiver for purposes of gaining compliance with this Court's orders, and the Court being otherwise informed as to the premises:

IT IS HEREBY ORDERED that JOHN W. POLDERMAN, ESQ., 363 West Big Beaver Rd., #410, Troy MI 48084 ("Receiver"), is hereby authorized to act with full powers over the interests in personal, real, mixed and business assets ("assets") of Brian T. Dailey, Individually, and the Dailey Law Firm, PC. wherever said assets are situated, for purposes of enforcement of this Court's Orders of February 27, 2023 and May 12, 2023.

AUTHORITY OF RECEIVER

IT IS HEREBY FURTHER ORDERED that the Receiver is hereby granted all powers and authority conferred by statutes and case law, including but not limited to MCL 554.1011 et. seq., to control, sell, encumber, take possession of, lease or liquidate said personal, real, mixed and business assets of Brian T. Dailey, Individually, and the Dailey Law Firm, PC in order to gain compliance with the Court's orders of February 27, 2023 and May 12, 2023.

IT IS HEREBY FURTHER ORDERED that the Receiver shall deposit into a fiduciary checking account any and all monies, cash, funds, etc. from the liquidation of the personal and interests in business assets of Brian T. Dailey, Individually, and the Dailey Law Firm, PC, and that the Receiver shall not disburse said without an Order of this Court.

IT IS HEREBY FURTHER ORDERED that the Register of Deeds shall accept a certified copy of this Order for recording, against any real property in which the Receiver

determines that Brian T. Dailey, Individually, and the Dailey Law Firm, PC has an interest in.

IT IS HEREBY FURTHER ORDERED that responsibility for the Receiver's costs and fees are solely the responsibility of Brian T. Dailey, Individually, and the Dailey Law Firm, PC.

IT IS HEREBY FURTHER ORDERED that the Receiver, while exercising his duties, is deemed a ministerial officer of this Court whose jurisdiction over the assets named in this Order shall be the same as the Court itself. *See Cohen v Bologna*, 52 Mich App 149; 216 NW2d 586 (1974). No action, suit, proceeding, claim, or demand arising from, in connection with, or relating to any of the assets and/or in the course of acting in such court-appointed capacity shall be pursued against the Receiver by any party or non-party without an allegation that the Receiver has acted in bad faith and without first obtaining leave of this Court. *See In re Motion to Sue Receiver of Venus Plaza Shopping Center*, 228 Mich App 357; 579 NW2d 99 (1998).

THE RECEIVERSHIP ESTATE

IT IS HEREBY FURTHER ORDERED that the Receiver shall be empowered, but not obligated to:

- (a) Preserve, hold, and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, to prevent any loss, damage, or injury;
- (b) Prevent the withdrawal or misapplication of funds;
- (c) Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal, or foreign court necessary to preserve or increase the assets of either party or to carry out her duties pursuant to this Order;

(d) Choose, engage, and employ realtors, attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

(e) Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate; and

(f) Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of this Court, or exercising the authority granted by this Order.

RESTRAINT ON TRANSFER OF PROPERTY

IT IS HEREBY FURTHER ORDERED that except as otherwise ordered by this Court, the Brian T. Dailey, Individually, and the Dailey Law Firm, PC and any and all persons acting in concert with him or on his behalf, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of the assets, except as otherwise ordered by this Court. This includes disbursement of any settlement fund proceeds for any ongoing litigation for cases being handled by the Brian T. Dailey, Individually, and the Dailey Law Firm, PC, excepting the client's share and/or any lienholders.

IT IS HEREBY FURTHER ORDERED that Brian T. Dailey, Individually, and the Dailey Law Firm, PC and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing, or disposing of, in any manner,

directly or indirectly, any documents that relate to the business practices or business or personal finances of Brian T. Dailey, Individually, and the Dailey Law Firm, PC

BOND OF RECEIVER

IT IS HEREBY FURTHER ORDERED that pursuant to MCR 2.622(C)(1) and (G), bond shall be a personal bond based upon consideration of the following, but not limited to, the following:

1. The value of the receivership estate, if known;
2. The amount of cash or cash equivalents expected to be received into the receivership estate;
3. The amount of assets in the receivership estate on deposit in insured financial institutions or invested in US treasury obligations;
4. Whether the assets in the receivership estate cannot be sold without further order of the Court;
5. If the Receiver is an entity, whether the Receiver has sufficient assets or acceptable errors and omissions insurance to cover any potential losses or liabilities of the receivership estate;
6. The extent to which any secured creditor is under-secured;
7. Whether the receivership estate is a single parcel of real estate involving few trade creditors; and
8. Whether parties have agreed to a nominal bond.

RECEIVER'S LIEN

IT IS HEREBY FURTHER ORDERED that the Receiver shall be authorized to record a claim of interest against any real and/or personal property in which Brian T. Dailey, Individually, and the Dailey Law Firm, PC retains a fee simple interest in and the

recordation of the Receiver's claim of interest shall constitute notice of the Receiver's lien for any of the Receiver's unpaid fees and costs.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED that the balance of any Judgment or orders of this Court previously entered shall remain in full force and effect and this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

/s/ Adel A. Harb 6/26/2023

CIRCUIT COURT JUDGE

EXHIBIT “B”

**STATE OF MICHIGAN
IN THE 3rd CIRCUIT COURT FOR THE COUNTY OF WAYNE**

DAILEY LAW FIRM, PC.

Plaintiff,

Case No.: 21

CZ

Honorable:

vs.

JODY INGRAM; INTEGRATED COUNSELING
SERVICES;; SUMMIT PSYCHIATRIC SERVICES;
CAPS CONSULTING, L.C.C.; TOTAL
TOXICOLOGY ;MED TRUST L.L.C.;
OPEN MRI OF LIVONIA; AMERICAN
SPECIALTY PHARMACY D/B/A ASP CARES;
M1 IMAGING; PAIN ASSOCIATES OF
MICHIGAN; CRAIG PEPPLER, D.O.
HENRY FORD HEALTH SYSTEM;
BLUE CROSS BLUE SHIELD OF MICHIGAN;
HEALTHCARE IMAGING; HEALTHCARE
IMAGING PARTNERS; KRANS REHAB, L.L.C.;
SPECTRUM REHABILITATION; ASSOCIATED
ORTHOPEDICS OF DETROIT; MICHIGAN
SPINE AND PAIN; MICHIGAN NEURO
OPHTHALMOLOGY; BINSON'S HOME
HEALTHCARE; LABCORP; PERFORMANCE
ORTHO; METRO DETROIT ENDOCRINOLOGY;
MICHIGAN CRNAS STAFFING, LLC;
SUSAN NELSON; ATI PHYSICAL THERAPY

Defendants.

DAILEY LAW FIRM, PC
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Document received by the MI Wayne 3rd Circuit Court.

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

/s/ Brian Thomas Dailey (P39945)
Brian Thomas Dailey (P39945)

COMPLAINT

GENERAL ALLEGATIONS PARTIES JURISDICTION AND VENUE

NOW COMES Plaintiff, **DAILEY LAW FIRM, PC**, and for its complaint states:

1. Dailey Law Firm, PC is a Michigan Law Firm organized under the laws of the State of Michigan as a Professional Corporation with its principal place of business in the City of Grosse Pointe Farms, County of Wayne, and State of Michigan.
2. That each and every one of the Defendants, not including Jody Ingram (Ingram), or Susan Nelson (Nelson) are business organizations which have done business in the City of Detroit County of Wayne State of Michigan and claim to have provided medical, transportation and/or financial services to or for the benefit of Ingram for her care recovery and rehabilitation from injuries sustained in an auto collision.
3. That Ingram at all times relevant was and is still believed to be a resident of the county of County of Oakland and State of Michigan whose last known address is 2068 Orpington Drive, Troy, MI 48083.
4. That Nelson, at all times relevant, was and continues to be a resident of the County of Wayne and State of Michigan whose last known address is 650 Light Tower Drive, Bellville, MI 48111
5. That this Honorable Court has subject matter jurisdiction of this case since the amount in controversy is in excess of \$25,000.00.

Document received by the MI Wayne 3rd Circuit Court.

6. That this honorable Court has personal jurisdiction over the parties to this action as all of them either reside or do business in the City of Detroit, County of Wayne and State of Michigan.

COUNT I

FACTUAL ALLEGATIONS

7. Plaintiff restates all allegations contained in paragraphs 1 – 6 above as though fully stated herein.
8. That on April 29, 2016 Ingram was in a vehicle travelling eastbound on Big Beaver Road when she collided with a car stopped at light ahead of her causing significant collision damage to both vehicles.
9. That Ingram sustained injury as result of the collision that included a severe and debilitating traumatic brain injury.
10. That defendants listed above claim to have provided services to Ingram for her care recovery and rehabilitation from her injuries from the collision.
11. That FRANKENMUTH MUTUAL INSURANCE COMPANY was the no fault insurance carrier in the nearest priority and thus was required to provide no fault benefits to Ingram including allowable expenses, work loss reimbursement and replacement services.
12. That FRANKENMUTH MUTUAL INSURANCE COMPANY did not readily nor timely make payments of Ingram's no-fault benefits so Ingram Retained Plaintiff, Dailey Law Firm, PC to pursue FRANKENMUTH MUTUAL INSURANCE COMPANY to compel payment of the no fault benefits at issue and to pursue CIGNA to enforce and compel

payment of long-term disability benefits that had been cut off by CIGNA wrongfully and without Justification.

13. That Plaintiff filed a complaint on behalf of Ingram against FRANKENMUTH MUTUAL INSURANCE COMPANY in the Wayne County Circuit Court bearing Wayne County Circuit Court Case No. in 17-003226-NF and assigned to the Honorable Patricia Perez Fresard.
14. That June 21, 2018 the parties reached a settlement of the no fault claims.
15. That on or about August 14, 2020, Cigna capitulated to the demands by Counsel undersigned base upon the evidence presented by Counsel undersigned and reversed the earlier cut off of benefits and then reinstated benefits.
16. That after deduction expenses incurred by and Attorney Fees earned by Dailey Law Firm, PC in both matters i.e. No Fault (Frankenmuth) and LTD (CIGNA) incurred by Dailey Law Firm, PC there remains the sum of \$166,135.40 in the Dailey Law Firm PC IOLTA for distribution as the Court may see fit and just.
17. That presently the amount of funds remaining for distribution is not enough to cover all claims in full.
18. It is believed that the outstanding claims are more than \$275,000.00 and that the remaining funds should return approximately 50% payment for the outstanding bills, assuming that all bills have been revealed.

COUNT II – DISTRIBUTION PURSUANT TO MCL 500.3112

19. Plaintiff restates all allegations contained in paragraphs 1 – 18 above as though fully stated herein.

20. That there is substantial doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled to the benefits.
21. Pursuant to MCL 500.3112 this Honorable Court has authority to designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate.

COUNT III – PETITION FOR INTERPLEADER

22. Plaintiff restates all allegations contained in paragraphs 1 – 21 above as though fully stated herein.
23. That MCR 3.603(A) (1) states in relevant part as follows: Persons having claims against the Plaintiff may be joined as Defendants and required to interplead when their claims are such that the Plaintiff is or may be exposed to double or multiple liability. It is not a ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical, but are adverse to and independent of one another, or that the plaintiff denies liability to any or all of the claimants in whole or in part.
24. That Dailey Law Firm, PC has expended time and money in filing this action for interpleader and will continue to expend additional time and money in litigating this interpleader action to its natural conclusion and Dailey Law Firm, PC is entitled to receive attorney fees and reimbursement of expenses incurred in this action

WHEREFORE, Plaintiff Dailey Law Firm, PC prays this Honorable Court enter an order providing the following relief:

- A. Enter an order to distribute the remaining funds among the various Defendant/Claimants pursuant to MCL 500.3112 or in the alternative order the following relief:
- B. That this Honorable Court enter an order for the safe keeping of the remaining funds held in the Dailey Law Firm, PC IOLTA account by either requiring payment into the Court or by requiring the funds be held in the Dailey Law Firm, PC IOLTA account pending final resolution of all liens against the proceeds of the settlement referred to above.
- B. That **Interpleading** Plaintiff then be discharged from any further liability to the **Interpleaded** Defendants in this matter, including but not limited to responsibility for costs, interest, or attorney fees above.
- C. That the **Interpleaded** Defendants in this matter then be required to **interplead** their respective claims to these proceeds within 30 days of their receipt of service;
- D. That Interpleading Plaintiff be awarded costs and reasonable attorney fees pursuant to MCR 3.603(E).

DAILEY LAW FIRM, PC

BY: /s/ BRIAN THOMAS DAILEY
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Attorneys for Plaintiff
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Brian@DaileyLawyers.com

Date: June 11, 2021

EXHIBIT “C”

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DAILEY LAW FIRM, PC,

Plaintiff,

v.

Case No. 21-007081-CZ
Hon. Adel A. Harb

JODY INGRAM; INTEGRATED COUNSELING
SERVICES; SUMMIT PSYCHIATRIC SERVICES;
TOTAL TOXICOLOGY; MED TRUST L.L.C.; OPEN MRI OF LIVONIA;
AMERICAN SPECIALTY PHARMACY D/B/A ASP
CARES; MI IMAGING; PAIN ASSOCIATES OF
MICHIGAN; CRAIG PEPPLER, D.O.; HENRY FORD
HEALTH SYSTEM; BLUE CROSS BLUE SHIELD
OF MICHIGAN; HEALTHCARE IMAGING PARTNERS;
KRANS REHAB, L.L.C.; SPECTRUM REHABILITATION;
ASSOCIATED ORTHOPEDICS OF DETROIT; MICHIGAN
SPINE AND PAIN; MICHIGAN NEURO OPHTHALMOLOGY;
BINSON'S HOME HEALTHCARE; LABCORP;
PERFORMANCE ORTHO; METRO DETROIT
ENDOCRINOLOGY; MICHIGAN CRNAS STAFFING,
LLC; SUSAN NELSON,

Defendants.

<p>DAILEY LAW FIRM, PC BRIAN T. DAILEY (P39945) WILLIAM DANAHER SAVAGE (P82146) ERIC C. HOORT (P84656) Attorneys for Plaintiff 63 Kercheval Ave., Ste. 215 Grosse Pointe Farms, MI 48236 (313) 640-1111 Brian@DaileyLawyers.com Eric@DaileyLawyers.com</p> <p>ROBERT S. DRAZIN (P23707) RAVID AND ASSOCIATES, P.C. Attorney for Defendant Ingram 23855 Northwestern Hwy. Southfield, MI 48075 (248) 948-9696 / (248) 948-5055 Fax bobd@drazinpc.com</p>	<p>GREEN & GREEN, PLLC JONATHAN A. GREEN (P51461) Attorney for Defendant, Michigan Spine and Pain 30300 Northwestern Hwy., Ste. 250 Farmington Hills, MI 48334 (248) 932-0500 jgreen@greenandgreenpllc.com</p> <p>DYLAN E. STEC (P82291) Attorney for Blue Cross Blue Shield 600 East Lafayette Blvd., Suite 1925 Detroit, MI 48226 (313) 763-8239 / (877) 277-1143 Fax dstec@bcbsm.com</p>
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**ORDER GRANTING DEFENDANT INGRAM'S MOTION TO INTERPLEAD FUNDS
AND OTHER RELATED RELIEF**

At a session of said Court held this 5/12/2023

Present: Hon Adel Harb

This matter having come before the Court pursuant to Defendant Ingram's Motion to Interplead Funds; briefs having been filed, and oral argument having been heard, and the Court being otherwise informed as to the premises:

IT IS HEREBY ORDERED that Plaintiff Dailey Law Firm, PC and Third-Party Defendant Brian T. Dailey shall pay interplead the total sum of six hundred thousand dollars (\$600,000.00), as set forth below:

IT IS HEREBY FURTHER ORDERED that said funds shall be delivered to Attorney Robert S. Drazin at his above-listed address in certified funds no later than 5:00 p.m. on May 22, 2023.

IT IS HEREBY FURTHER ORDERED that said funds shall thereafter be deposited into an escrow account to be created by Mr. Drazin for the purpose of holding these funds, and kept in said account until further order of the Court.

IT IS HEREBY FURTHER ORDERED that Mr. Drazin, as Counsel for Defendant Ingram, shall file notice to this Court upon receipt of the funds, and shall further file notice upon placing the funds have been deposited into an escrow account, and provide information to this Court as to the name of the bank and last 4 digits of the account number.

IT IS HEREBY FURTHER ORDERED that no withdrawals shall be taken from said escrow account, until so ordered by this Court.

This is not a final order and does not close this case.

/s/ Adel A. Harb 5/12/2023

Hon. Adel Harb

EXHIBIT “D”

1 STATE OF MICHIGAN
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
 3
 4 DAILEY LAW FIRM, P.C.
 5 Plaintiff, Case No. 21-007081-CZ
 6 vs.
 7 JODY INGRAM, et. al,
 8 Defendants.
 9 -----/

10 Zoom proceedings taken in the
 11 above-entitled matter before **HONORABLE ADEL HARB**,
 12 Third Judicial Circuit Court Judge, Detroit, Michigan,
 13 on June 16, 2023.

14 APPEARANCES:

15 FOR PLAINTIFF: MR. BRIAN DAILEY
 16 63 Kercheval Ave, Ste 215
 Grosse Pointe Farms, MI 48236
 17 FOR MI Spine: MR. JONATHAN GREEN
 18 30300 Northwestern Hwy #250
 Farmington Hills, MI 48334
 19 FOR JODY INGRAM: MR. ROBERT DRAZIN
 20 23855 Northwestern Hwy
 Southfield, MI 48075
 21 FOR PEPPLER: MS. ELIZABETH DOWNEY
 22 30445 Northwestern Hwy, #250
 Farmington Hills, MI 48334
 23 FOR M1 IMAGING: MS. JAILAH EMERSON
 24 480 Pierce St., Ste 300
 Birmingham, MI 48009
 25

1 APPEARANCES CONTINUED:

2

FOR MI NEURO

3 OPTHALMOLOGY: MR. JOSH HAVENS
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4

5 FOR BCBS: MR. DYLAN STEC
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6 Detroit, MI 48226

6

7 FOR MRI LIVONIA: MR. PHILIP JAFFE
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8

9 FOR KRANS REHAB: MR. TIMOTHY SULOLLI
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10

11 FOR CRNA STAFFING: MR. IAN COOTE
17 S. Saginaw St., Flr 2
Pontiac, MI 48342

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19 Shelee Beard
20 Official Court Reporter

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1 T A B L E O F C O N T E N T S

2 WITNESS

Page

3 N/A

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5 E X H I B I T S

6 NUMBER

ADMITTED

7 N/A

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1 Detroit, Michigan

2 June 16, 2023

3 - - -

4 THE CLERK: Calling 21-007081-CZ

5 THE COURT: Good morning.

6 MR. DAILEY: Brian Dailey on behalf
7 of Plaintiff, Dailey Law Firm.

8 MR. HAVENS: Josh Havens on behalf of
9 Defendant, Michigan Neuro Ophthalmology.

10 MR. DRAZIN: Bob Drazin on behalf of
11 Defendant, Jody Ingram.

12 MS. EMERSON: Jailah Emerson on
13 behalf of Defendant, M-1 Imaging.

14 MR. COOTE: Ian Coote here for
15 Defendant, CRNA Staffing.

16 MR. SULOLLI: Tim Sulolli appearing
17 on behalf of Krans Rehab.

18 MR. GREEN: Jonathan Green on behalf
19 of Michigan Spine and Pain.

20 MR. JAFFE: Philip Jaffe on behalf of
21 Open MRI of Livonia.

22 MR. STEC: Dylan Stec for Blue Cross.

23 MS. DOWNEY: Elizabeth Downey on
24 behalf of Craig Peppler, D.O. and Pain Associates
25 of Michigan.

1 THE COURT: Is that everyone?

2 MS. DOWNEY: I believe so, your
3 Honor.

4 THE COURT: All right. Today is the
5 time and date scheduled for a show cause.
6 Counsel.

7 MR. DAILEY: Your Honor, I'm not
8 aware of a show cause order being entered. This
9 is a motion for an order to show cause. So I
10 don't think the Court, unless I missed it, I
11 apologize, but I'm not aware of any order being
12 entered yet requiring me to show cause. This is
13 a motion asking the Court to require me to show
14 cause. If the Court enters that order to show
15 cause that would implicate issues of civil
16 contempt for which this Court has the authority
17 to impose fine of \$7,500 or incarceration for up
18 to 93 days depending upon whether or not the
19 Court finds that the failure to follow the order
20 is subject to the show cause for the willful
21 failure.

22 I'm telling the Court -- I'm asking
23 this Court to adjourn this hearing so I can have
24 counsel. I don't have counsel. I attempted to
25 get intervention from the court of appeals; they

1 have denied that intervention because there is no
2 harm as yet. I intend to go back to the court of
3 appeals depending on what this Court does.

4 Given the fact that this Court has
5 the power to deprive me of liberty and property,
6 I am demanding that I be allowed to have counsel.
7 I don't have counsel. I've not been able to find
8 counsel. I would ask the Court to adjourn this
9 for a period sufficient to allow me to do that.
10 That's the first thing. The second thing is I'm
11 still under a doctor's order not to participate
12 in hearings. That is an order that goes through
13 August of 2023 due to a virus that I had, a lung
14 infection in April. I do want to indicate to the
15 Court that as I mentioned earlier in the earlier
16 hearing, I'm unable to adhere to the Court's
17 order because I don't have the money to do so.
18 It's not a willful violation, Judge. It's a
19 violation, if at all, based upon an inability to
20 provide the funds. And that's because the fees
21 on this case were earned in 2018 and distributed
22 with Ms. Ingram's permission, knowledge and
23 notice which then reduced the fund to somewhere
24 in the neighborhood of \$370,000. And then there
25 were payments made to medical providers that had

1 valid liens for services rendered, transportation
2 company, which then reduced it to probably in the
3 neighborhood of \$300,000. Then there was further
4 reduction in 2020 after I had been successful in
5 a litigation for Ms. Ingram to restore her
6 long-term disability benefits. I met with them
7 and provided to them an accounting to explain how
8 to work, were the fees were, all the fees
9 distributed to Dailey law firm were supported by
10 a valid contingent fee agreement signed by the
11 client and called for contingencies that were
12 paid. That then further reduced the fund to
13 \$155,000 approximately. That all took place more
14 than two years ago. In the case of the no-fault
15 fee, it was close to four years, actually five
16 years ago.

17 So there is no willful violation of
18 the order here, Judge. This order is an order
19 that is impossible for me to adhere to because
20 the funds had been distributed prior to today
21 with permission of Ms. Ingram. And I note Ms.
22 Ingram is not here on Zoom call and would be an
23 important witness for the Court to make a
24 determination as to whether or not there were a
25 prior (inaudible) and approved distributions.

1 I'd ask the Court to adjourn this so
2 I can obtain counsel. I have a right to counsel
3 under sixth amendment because this Court has the
4 ability to deprive me of my property and also
5 liberty depending on what the Court finds. I'm
6 reminding the Court that I have an illness that
7 prevents me -- I've been ordered not to
8 participate in hearings like this; I shouldn't
9 be.

10 THE COURT: Wait. What hearings are
11 you allowed to participate in if you're not
12 allowed to participate in hearings like this?
13 Which ones are you allowed by your doctor to
14 participate in?

15 MR. DAILEY: My doctor told me to
16 stay out of hearings and stay out of trials. So
17 I've done my best.

18 THE COURT: Those are your doctor's
19 orders to stay out of trial, but not to stay out
20 of your office?

21 MR. DAILEY: Because of the nature of
22 the illness, Judge, affecting my vocal cords, the
23 doctor is treating me for my vocal cords and
24 damage to my vocal cords as a result of it. He
25 told me to stay out of hearings where I have to

1 speak at length and to stay out of trials. I
2 have a trial in Chicago I got to go and adjourn
3 next week.

4 I'm not required to stay out of my
5 office; I can still work. I've been called on to
6 participate in hearings and trial. Not every
7 Judge has afforded me the ability to avoid
8 hearings. Some Judges have made me go forward no
9 matter what. I have a duty to my client so I
10 have to do that even though it's deleterious to
11 my health and my welfare. There's nothing I
12 could do.

13 I do tell every Judge ahead of time
14 about my condition. I can show the Court the
15 doctor's orders if the Court would like. I'd
16 hate to do that in front of these attorneys. If
17 the Court would join me in a break out room to
18 show you, I'd be happy to do that. I've asked
19 the doctor to sign an affidavit. I think he has.
20 I haven't picked it up yet. He's at Henry Ford
21 Hospital. That's one issue.

22 The other issue is because this
23 Court, depending upon the finding it makes, has
24 the ability and authority to deprive me of
25 liberty and property, I'm entitled to an attorney

1 to represent me, and I don't have one. So I'm
2 asking this Court to adjourn this to allow me to
3 do so.

4 THE COURT: All right. Anybody want
5 to respond?

6 MR. DRAZIN: If I may, your Honor,
7 there's a lot to respond to, but I'll be brief.
8 I represent Jody Ingram and anything he said
9 about Jody Ingram's agreement to what has
10 happened is not correct. She never agreed to the
11 disbursement. She was improperly advised. So
12 any statements regarding Jody Ingram that Mr.
13 Dailey says is incorrect.

14 Also, I originally filed my motion,
15 your Honor, in October of 2022. It has
16 continually been adjourned because of Mr.
17 Dailey's request for adjournment because of
18 illness and/or because he needs an attorney.
19 When we last heard this motion, it was on a
20 Monday, I believe, Mr. Dailey made a comment to
21 you that he was meeting that evening with an
22 attorney. That was two months ago, a month ago,
23 whenever that was. We are all accustomed to be
24 getting all these motions and hearing the same
25 from Mr. Dailey that he's ill and that he needs

1 to hire an attorney. It's not that hard for an
2 attorney to find an attorney. So I ask you to
3 ignore that and go ahead with the motions that
4 are before you.

5 When we had the last motion, you were
6 aware Jody Ingram had filed a bar grievance
7 against Mr. Dailey. You asked Mr. Dailey what is
8 the status of that bar grievance. His response
9 was it has been two years; he hasn't heard
10 anything. And the inference he was setting forth
11 was that, therefore it must not be accurate. If
12 you wish me to comment on that response, I'd be
13 glad to, your Honor.

14 MR. DAILEY: Your Honor, I can
15 comment on that. That's true I did tell you that
16 at the last hearing because that's what the state
17 of affairs was at that time. After that, I
18 received a subpoena from the Attorney Grievance
19 Commission asking for information related to the
20 distributions from the \$600,000 settlement and
21 that is something I'm working on right now; it's
22 not yet due. I'll have it turned in to the
23 Attorney Grievance Commission by the time that
24 it's due. That is a new development, but there
25 was a significant long period of time that I went

1 without hearing a single thing from the grievance
2 commission about that. I think just given a
3 subpoena does not mean that it is going to any
4 higher level. They're just investigating.

5 By the way, Judge, Michigan Rules of
6 Professional Conduct and the rules that govern
7 the operation of the Attorney Grievance
8 Commission requires that all of that remain
9 confidential. Mr. Drazin has violated that rule
10 twice by bringing to the Court's attention the
11 fact that Ms. Ingram filed that against me. And
12 she did it, I might add, in connection with an
13 attorney who was representing her before we
14 decided not to represent her.

15 THE COURT: Didn't you kind of open
16 the door because you said you had not heard
17 anything for two years; isn't that really
18 disclosing confidential information if you bring
19 that point up; didn't you just open that door
20 when you said that?

21 MR. DAILEY: Judge, I didn't raise
22 that issue in the last hearing. That was raised
23 by Mr. Drazin in the last hearing, so I
24 responded. I'm trying to be forthright and
25 forthcoming to this Court. The Court has

1 significant duties and responsibilities here
2 which I perceive the Court attempting to meet
3 with great professionalism, and I appreciate
4 that. It's my duty to provide information to the
5 extent I can. It doesn't mean I have to agree
6 and Mr. Drazin can continually berate me as he
7 has in the hearings.

8 The last time he told me I stole her
9 money. That's not true. I didn't steal
10 anything. Everything I've done is according to
11 the Rules of Professional Conduct and the
12 Michigan Court Rules. I have contingency
13 agreements that have been in place since 2016 and
14 '17 signed by the client with notice and sat down
15 with me in terms of the ARISA claim, which I
16 think is the biggest issue in terms of most of
17 these lawyers here, there's an ethics opinion
18 that supports my fees that were paid to me; they
19 were paid to me and they all know that.

20 THE COURT: Mr. Dailey, we keep going
21 in circles here. All I want you to do is put
22 back the money; that's what I ordered you to do.

23 MR. DAILEY: And I can't because I
24 don't have it.

25 MR. SULOLLI: Your Honor, there's

1 been no good-faith attempt for Mr. Dailey to pay
2 anything. He didn't even put the money in that
3 he told you and told us he had, the \$260,000. He
4 simply chose to ignore your order. There's no
5 good-faith effort. If Mr. Dailey at least had
6 paid that amount, I would get some argument here
7 in terms of what he's trying to same. He didn't
8 even do that at a minimum.

9 MR. DAILEY: Your Honor, if I may,
10 when we were at the last hearing, I did ask the
11 Court to allow me to do that and the Court said
12 no.

13 THE COURT: It wasn't 255; what was
14 the amount you stated at that time?

15 MR. DAILEY: \$155,000.

16 THE COURT: That's a difference of
17 \$100,000 from what you stated. I want that clear
18 because when you did suggest that, I said that
19 was not good enough.

20 MR. DAILEY: Right.

21 THE COURT: It was not 255,000.

22 MR. DAILEY: Thank you Judge, for
23 pointing that out. I appreciate that.

24 THE COURT: Somebody else want to --
25 go ahead counsel.

1 MR. HAVENS: Just not this Court
2 originally ordered Mr. Dailey to interplead the
3 funds back in February. We're four months out.
4 Every time we come it's the same story, same song
5 and dance. I'll just note again that \$155,000
6 your Honor did order him to interplead \$600,000.
7 He did indicate at all times he could interplead
8 \$155,000. I don't think the Court told him you
9 can't interplead \$155,000. I think we'd all
10 agree if there was any showing of good faith
11 whatsoever and this wasn't willful, he would at
12 least interplead what he does have. He's saying
13 he can't comply with the Court's order. You'd
14 think that for somebody who's under court order
15 they would comply to the extent that they can.

16 To Mr. Dailey's point, we're here
17 today asking the Court to order -- order Mr.
18 Dailey to come forth and show cause why he should
19 not be held in contempt. For that kind of
20 hearing it's pretty straight forward. The
21 Court's got an order he hasn't complied with.
22 It's a relative routine matter that the Court
23 would issue that order. And if he needs time to
24 find an attorney to appear and argue why he
25 shouldn't be held in contempt, that's a different

1 matter than what we're here for today, which is
2 asking the Court to issue an order for him to
3 come to court at a later date and show cause.

4 MR. DAILEY: Your Honor, I just want
5 to point out that, and I want to remind all
6 counsel that when I did the analysis of the
7 attorneys fees or the payment of attorney fees on
8 ARISA claims, my contingency fee agreement says
9 that I can do one or two things. I can take my
10 fees out of any lump sum that is provided, but if
11 there's no lump sum and I have a fund of money
12 over which I have a possessory lien, which she
13 gave me in my fee agreements, then I can take
14 one-third of the present value of the total
15 lifetime payments.

16 I hired an accountant to figure out
17 what was the one-third value and total -- the
18 present value of the total lifetime payments, and
19 I'm looking at taking one-third of that. I
20 decided I didn't want to do that. So I already
21 reduced my fees on the ARISA claims to one-third,
22 which she entitled me to, to just 20 percent,
23 Judge.

24 It's not like I'm not trying to work
25 with these people. And the other, Judge, because

1 I think it's really important, you take a look at
2 all of the bills that's been submitted by all of
3 these providers, they add up to not much more
4 than \$155,000. That's at full amount, which no
5 medical provider, no medical provider ever gets.
6 They always have to reduce it in order to take
7 into consideration the attorney fees that were
8 paid in order to create that fund. And if this
9 goes according to the way it should go and the
10 way it normally goes, then every single one of
11 these providers that were reduced by one-third
12 would recognize attorney fees Ms. Ingram paid, we
13 would be done with this within that \$155,000.

14 In addition to that, Judge --

15 THE COURT: You can argue in mirror.
16 I don't want to hear about that. All I want to
17 hear about is I ordered the money be put back in
18 place. You can make that argument at the
19 appropriate time, but you are in violation of my
20 order to put the money back. You keep wanting to
21 go into what should have been paid off or paid
22 on, or whatever. I don't want to hear that.

23 MR. DAILEY: I understand.

24 THE COURT: All I want to hear is
25 that I ordered you to put the money back. You

1 have either refused, or whatever you want to
2 describe it as; you don't have the money; the
3 money is gone, whatever description you have. I
4 ordered you to put the money back and you didn't.
5 That's all I'm looking at today.

6 MR. DAILEY: I want to be clear.
7 I've not refused, absolutely not. I would not
8 refuse to follow the Court's order. I can't
9 follow the order; it's an impossible order for me
10 to follow. I don't have the resources to do so.
11 I'm not refusing to follow your order, Judge. In
12 fact, I've never refused an order of you. I've
13 shown up at every hearing. I've produced what
14 you told me to produce that was in my power to
15 produce. I've done everything I'm supposed to
16 do.

17 THE COURT: Except pay the money,
18 which is what I want you to do. You've done
19 everything but pay the money back. You keep
20 telling me you're doing everything that I ordered
21 you to do. All I want you to do is one thing;
22 put money back. I don't care about everything
23 else. That doesn't matter right now. We'll deal
24 with that issue at the appropriate time. You
25 didn't even put an extra dollar from the amount

1 you say you owe.

2 MR. DAILEY: I don't understand, your
3 Honor.

4 THE COURT: Not even a dollar more,
5 right?

6 MR. DAILEY: I don't understand what
7 you're saying.

8 THE COURT: What number are you
9 saying you still have in the bank?

10 MR. DAILEY: 155,000.

11 THE COURT: Did you come to this
12 Court and say, well, I don't have the 600; I have
13 another 100,000 or 200,000 to put back?

14 MR. DAILEY: I don't have another
15 100,000 to put back.

16 THE COURT: Okay.

17 MR. DAILEY: The thing is, it is not
18 sufficient for you to find a violation to order
19 me to show cause. You have to find a willful
20 violation. There's no evidence here in relation
21 to that accept my evidence and my testimony I
22 don't have the money. There's nobody that
23 testified or can testify that there's a willful
24 violation of your order. I'm testifying --

25 THE COURT: That's your opinion, Mr.

1 Dailey.

2 MR. DAILEY: I understand.

3 THE COURT: We'll see.

4 MR. DAILEY: I'd like to have an
5 evidentiary hearing, Judge, on that issue.

6 THE COURT: Who else?

7 MR. HAVENS: I would just note I
8 don't now if we're here today to argue what
9 willful and what's not.

10 THE COURT: We're not, so I don't
11 want to go into that.

12 MR. HAVENS: I think there would be a
13 willful violation to an extent, which would be to
14 the extent he's capable of paying back, which he
15 willfully hasn't?

16 MR. DAILEY: I disagree with that,
17 Judge, and I object to those comments in view of
18 the fact that you yourself just remarked that I
19 offered to do that and was told that wasn't good
20 enough by this Court. So for Mr. Haven to
21 continue arguing that point I think is
22 disingenuous and improper.

23 THE COURT: Go ahead, Mr. Green.

24 MR. GREEN: I think at this point we
25 know that the order hasn't been complied with

1 maybe the remedy at this point would be to
2 appoint a receiver in the interim to gain
3 compliance with the Court's order separate and
4 apart from any issues about contempt. I
5 understand Mr. Nathanson is here. He has another
6 matter apparently before the Court, but he is
7 experienced as a receiver. He might be somebody
8 the Court would consider at this point. Really I
9 have nothing further to add other than that.

10 MR. DAILEY: Your Honor, may I
11 respond.

12 THE COURT: Go ahead.

13 MR. DAILEY: I think you need make to
14 a decision as to whether or not there was a
15 willful violation before you take any remedial
16 action. I need an evidentiary hearing and
17 counsel on that issue; that's the second thing.
18 The third thing is Mr. Nathanson is here because
19 he's watching this hearing because he and I are
20 involved litigation right now where we have
21 motions up in front of Judge Gibson. Mr.
22 Nathanson has filed a request for investigation
23 against me as a result of that litigation. He
24 clearly is a biased individual. He's not
25 qualified to serve in capacity of receiver.

1 There's no basis upon which to appoint a receiver
2 because this Court has not made a decision as to
3 whether or not there's a willful violation. As I
4 understand it, the Court is going to hold another
5 hearing to determine if there's a willful
6 violation at which I want to be represented by
7 counsel.

8 THE COURT: You keep saying you want
9 to be represented by counsel. What's stopping
10 you from doing that? Isn't that something you
11 said you were working on doing last time?

12 MR. DAILEY: I did. I've spoken with
13 a number of attorneys, and I have been unable to
14 find one who feels qualified to handle this case.
15 And I'm still looking. I'm doing the best I can.
16 The attorney I told you I was meeting with after
17 the last hearing, I did. They were not willing
18 to represent me on it. So I'm doing the best I
19 can.

20 THE COURT: Let me ask you this; how
21 many attorneys have you talked to since the last
22 hearing?

23 MR. DAILEY: Five.

24 THE COURT: From the five you were
25 unable to retain any of them.

1 MR. DAILEY: That's correct. It's
2 not because I can't retain them, it's because
3 they were not willing to be retained. There's
4 not a lot of people, far as I can tell, with
5 experience and comfort in civil contempt
6 proceedings. I can give you in camera the names
7 of the attorneys I contacted, Judge.

8 THE COURT: I'm okay not knowing
9 right now.

10 Anybody else? Ms. Downey.

11 MS. DOWNEY: If the Court is
12 intending to hold a hearing at a later date to
13 determine whether or not the noncompliance was
14 willful or not willful, I'd request that we have
15 an opportunity to have forensic accountants
16 investigate what assets and liability the firm
17 and Mr. Dailey actually has so we're in position
18 to argue from a basis of fact as to whether there
19 was or was not an ability to comply. That's all
20 I have.

21 MR. DAILEY: Your Honor, that sounds
22 like a collection action. There's never ever a
23 basis upon which to institute collection
24 procedures before there's a finding or before
25 there's a judgment. I would object to that.

1 MR. DRAZIN: Your Honor, if I may,
2 Mr. Dailey is telling the Court repeatedly he
3 doesn't have the funds to obey your order. The
4 only way to make that determination would be
5 appoint00 a receiver. My understanding is Ms.
6 Downey talked to Plante Moran who has people well
7 experienced in this area and glad to serve. I've
8 spoken with another attorney same kind of
9 experience and would be glad to serve. I would
10 ask the Court if you order a receiver to comment
11 on the truthfulness of Mr. Dailey that he has no
12 money, that that be done at the sole expense of
13 Mr. Dailey.

14 MR. DAILEY: Your Honor, I can show
15 the Court and I can show counsel proof of the
16 distributions that have been made and to whom
17 they've been made from the funds of money that
18 was received in the settlement. Mr. Sulolli's
19 partner received approximately \$50,000 of the
20 funds with permission from Ms. Ingram early on
21 because Mr. Goodman had a valid lien for Life
22 Skills Village. He presented it early on. I
23 talked to my client about it. My client approved
24 it.

25 My point is you don't need a forensic

1 accountant for me to show where the money went.
2 The money I have in my trust account belongs to
3 other clients in addition to Ms. Ingram or these
4 providers to the extent of \$155,000. So I can
5 within seven days put together the accounting
6 showing what the distributions were and with the
7 back up showing checks and wire transfers to the
8 extent they exist. In the nature of a collection
9 action there's been no judgment made here. I'm
10 asking the Court to not appoint that.

11 A receiver would have far greater
12 powers than necessary here. There's just an
13 accounting that's due. I did an accounting.
14 Nobody ever asked me for further detail. I'm
15 happy to provide it. I'm more than happy to show
16 where the funds had gone.

17 THE COURT: Mr. Green.

18 MR. GREEN: Thank you, your Honor.
19 The more I'm hearing, the more I'm thinking a
20 receiver is a good idea. He's an arm of the
21 Court. He can enforce compliance with this
22 Court's order or be that third party to tell the
23 Court what can and cannot come from the estate.
24 I think for our purposes it's probably the best
25 way to go. Again, we're not relying on argument

1 of counsel. He's an arm of the Court, whether
2 it's Mr. Nathanson or someone else. I've got a
3 couple other names I can think of.

4 THE COURT: If I consider it, I
5 certainly want somebody who's not connected to
6 this case or any of the parties involved.

7 MR. GREEN: One name that comes to
8 mind is John Polderman. I think that's probably
9 the best way to approach this issue. I know he
10 does quite a few of these things.

11 MR. DAILEY: Your Honor, wouldn't it
12 be better to start out with an accounting that
13 has details showing copies of checks and
14 distributions and wire transfers and transfers?
15 I can show --

16 THE COURT: I'm thinking it may be a
17 good start and spot for a receiver. It may be a
18 good spot for a receiver to look at.

19 MR. DAILEY: Your Honor, what I'm
20 suggesting is the Court allow me to put that
21 together and submit it to all counsel. Then if
22 they have a problem with what I submitted, I'm
23 sure they won't because they'll be all documents
24 from the bank unquestionable and show to the
25 penny what's left and what's been distributed on

1 Jody Ingram's behalf. I think it's better to
2 start with that because I don't think we would
3 need to have a receiver.

4 If the Court wants a receiver after I
5 submit that, then that's something the Court
6 should consider. But right now nobody ever asked
7 me for that detail.

8 THE COURT: I think we're a little
9 beyond that right now. I don't speak on behalf
10 of anybody. I'm saying as far as I'm concerned,
11 I think we're a little beyond that.

12 Who else wants to jump in and say
13 anything?

14 MR. HAVENS: I concur with the
15 request for a receiver. I understand what Mr.
16 Dailey is suggesting but it's not as if all
17 counsels are here alleging this \$600,000 is still
18 sitting in his IOLTA Trust Account. We have no
19 doubt that he made himself to the tune of
20 \$450,000. I don't think that's really in
21 dispute. It's a question about whether he
22 complied with this Court's order. I think an
23 accounting by a neutral third party is the best
24 way to get us, as Ms. Downey said, on a factual
25 footing in that regard.

1 MR. DAILEY: My response just is all
2 I'm telling you is based upon the last comment
3 that I heard, They've already assuming you made a
4 finding of willful violation of your order.
5 They're already going to collection procedures
6 which is inappropriate, unsupportable in the law.

7 MR. DRAZIN: Your Honor, if I may.

8 THE COURT: Go ahead.

9 MR. DRAZIN: The request for the
10 appointment of a receiver isn't solely directed
11 toward any disbursement Mr. Dailey made. It's
12 based upon whether Dailey's statement he can't
13 afford to put the money in the account is correct
14 or not. And that means the receiver has to go
15 beyond just the money Mr. Dailey computed Ms.
16 Ingram was entitled to. Well, I'll be quiet.

17 MR. DAILEY: Again, Judge, they're
18 arguing now as if you've already found I
19 willfully violated your order. You haven't found
20 that as far as I know. That's collections
21 procedures, which are never ever appropriate
22 until there's a finding of something to collect,
23 until there's a judgment or an order finding
24 there's a debt.

25 I understand that you ordered me to

1 pay back \$600,000. I've told you a million times
2 that I would adhere to your order if I could, but
3 I've already distributed funds from that fund.
4 So what I have is \$155,000. I've offered last
5 time to pay that as the court order; the Court
6 didn't think that was good enough. I've done
7 everything I can do. And to put a receiver on to
8 do a creditor exam, which is what they're asking
9 for, is inappropriate and it's unsupported.

10 I would ask that the Court schedule
11 an evidentiary hearing, make a determination
12 after that evidentiary hearings as to whether it
13 was a willful violation and fashion what ever
14 remedy the Court think is appropriate.

15 THE COURT: It not about collection.
16 It's about you telling the Court you don't have
17 the money to pay to put back into the account; is
18 it not?

19 MR. DAILEY: That is collections.

20 THE COURT: How's that collections?

21 MR DAILEY: Because what you're doing
22 here is taking money -- what you're attempting to
23 order me to take money that's already been paid
24 to me and put it back in the court four years
25 later; that is collection. In other words, it's

1 tacit to a finding that my fees were not
2 appropriate. There's been no finding to support
3 that. It is collections. Those funds have
4 already been paid to me by permission of my
5 client pursuant to the contingency agreement
6 supported by Michigan Court Rules, the ethics
7 opinion. That's what you're doing. That's why
8 I'm asking the Court to hold an evidentiary
9 hearing before you fashion any remedial relief.

10 THE COURT: Somebody else wanted to
11 say something?

12 MR. SULOLLI: Mr. Dailey is entitled
13 to make a claim. What he's entitled (inaudible)
14 the money put in the fund. That's why you
15 ordered \$600,000 to be put in. It doesn't
16 distinguish Mr. Dailey's ability to argue he's
17 entitled to X amount of dollars and that's the
18 evidentiary hearing. For Mr. Dailey to suggest
19 let's have an evidentiary hearing and let me give
20 you an accounting, how do we know if that
21 accounting is correct if we don't have an
22 independent party to look at his financial and
23 determine whether, in fact, he's accurate in
24 terms of his inability to pay and whether or not
25 that was willful or not. How do we not establish

1 that if we don't have an independent party come
2 in and look at his financials?

3 MR. DAILEY: The way they will know
4 is by looking at what I provided in terms of back
5 up and the detail showing where the \$600,000
6 went. His partner --

7 THE COURT: What you want me to do is
8 go through this process only to come back in four
9 to six months and be where we're at today.

10 MR. DAILEY: No, Judge, I don't. I
11 want you to hold an evidentiary hearing on all
12 issues here before making any remedial decisions.
13 And do it as quickly as you can. Do it in two
14 weeks; do it in a week. Give me the time I need
15 in order to present these issues to the Court.
16 I'm sure the Court will be satisfied that I've
17 been honest, forthright and professional, that
18 I'm entitled to the fees that I took, I was paid.
19 That's what I'm asking for. I'm asking you to
20 put the cart behind the horse not the other way
21 around. What they want to do is have you start
22 collection procedures and creditor hearings
23 before you even determine if that's a necessary
24 issue.

25 The \$50,000 that was paid to Barry

1 Goodman, Mr. Sulolli's partner, would have to
2 come back into the court, too. Why would I have
3 to make up \$50,000 that somebody else got with
4 permission from my client in 2018?

5 THE COURT: Mr. Havens, you wanted to
6 say something?

7 MR. HAVENS: Yes. To the extent it's
8 on the table about whether or not the Court has
9 power to order a receiver, I think the law is
10 clear, I've done research while sitting here. I
11 turn the Court's attention to MCL 600.2926 which
12 circuit court judges in the exercise of their
13 equitable powers may appoint receivers when cases
14 allow by law. I don't think there's any law in
15 this circumstance that disallows it. Again, I
16 think Mr. Dailey is -- I think it's him putting
17 the cart before the horse that is our argument
18 this is some kind of situation where willfulness
19 is presumed. We don't even get there until we
20 have an accurate factual footing. That what a
21 receiver would do.

22 MR. DAILEY: Your Honor, the receiver
23 would do far more than that. Unless the Court is
24 going --

25 MR. HAVENS: The same statute I

1 quoted says the Court has the inherent power to
2 define and limit the duties of the receiver, so
3 to the extent Mr. Dailey believes there's a risk
4 that a receiver would go too far, this Court can
5 express concerns. And this Court can
6 specifically define the role and duties and
7 limitations of the receiver in this situation if
8 one were to be appointed.

9 MR. DAILEY: Your Honor, if the
10 defendant counsel wants to put together a name or
11 two names of accountants they would propose as
12 witnesses, I can provide those accountants the
13 documentation they would need in order to
14 determine what it is they're looking for in terms
15 of the distribution and the diminution of this
16 fund. What they keep asking for is tantamount to
17 a creditor's exam. With all due respect --

18 THE COURT: I don't get that. I
19 don't know why you keep going to this creditor
20 exam and collection when a receiver is mentioned.
21 I don't know why you keep wanting to --

22 MR. DAILEY: Here's why, Judge. The
23 reason why is because the funds that they want me
24 to pay back that you ordered me to pay back, the
25 fund that have already been distributed by

1 permission of Jody Ingram. \$50,000 of it was
2 distributed to Tim Sulolli's partner, Barry
3 Goodman, because he presented a valid lien.

4 Now what you're telling me to do is
5 go to Barry Goodman and tell Barry Goodman to cut
6 a check for \$50,000 back into the Court. I
7 brought this to the Court's attention last time,
8 and the Court said, no, I'm not going to make him
9 do that. You pay it. So it's already been taken
10 out of the \$600,000. This is a taking from Brian
11 Dailey without adequate support legally to do so;
12 that's what this is. I am quite positive if they
13 want to hire an independent accountant to look at
14 the documentation I'm proposing to provide to
15 them, they'll be more than satisfied that the
16 funds have been distributed pursuant to
17 permission from Ms. Ingram.

18 There's no need to appoint a
19 receiver. I'm not suggest the Court doesn't have
20 the authority to do that, but there has to be a
21 need for it, and there is no need for it.

22 THE COURT: If you don't think
23 there's a need for it after all these hearings
24 and all these claims, I must be missing
25 something.

1 MR. DAILEY: Not to say you're
2 missing anything, Judge.

3 THE COURT: I must be because if any
4 case -- I'll be honest with you. I thought about
5 a receiver even before it was mentioned because
6 if any case probably needs a receiver it's this
7 case.

8 MR. DAILEY: I respectfully disagree,
9 Judge. I think it's a fairly simple case to show
10 what happened to the \$600,000.

11 THE COURT: You keep saying that but
12 obviously that hasn't been the case.

13 Mr. Havens, go ahead.

14 MR. HAVENS: I think Mr. Dailey
15 already made the distinction and we already know,
16 let me prove to you that I paid myself \$450,000.
17 We know we paid himself \$450,000. The question
18 then is where is that money. He said he doesn't
19 have it. He can't pay it back. Where is it? To
20 the extent he can't pay it back I think we all
21 deserve that factual footing to know exactly what
22 he can pay back.

23 THE COURT: I'll give you the last
24 word, Mr. Dailey.

25 MR. DAILEY: I tell you exactly where

1 it went. It went to rent. It went to health
2 insurance. It went to malpractice insurance.
3 It's funds that were put into an office that I
4 earned legitimately pursuant to contingency
5 agreements approved and signed by my client,
6 received for the work called for in those
7 agreements. That's where it went. Everything
8 else is taking money out of my pocket. That is
9 not appropriate. This is not a collection
10 action. That's it, Judge. I made my argument.

11 I just really want to make one last
12 argument. I'm entitled to counsel in a hearing
13 involving contempt. I'm asking the Court to
14 allow me to do that, to have counsel.

15 THE COURT: Anybody that has not said
16 anything wants to say anything before --

17 I know somebody mentioned the name of
18 Holderman (sic). Did somebody say Holderman?

19 MR. DRAZIN: It's Polderman; P as in
20 Paul.

21 THE COURT: Okay. Polderman. I'm
22 going to appoint -- is John the first name?

23 MR. HAVENS: Correct.

24 THE COURT: I'm going to appoint him
25 as a receiver. I think this case needs a

1 receiver. We keep going in circles as far as
2 what the arguments are. And we'll come back.
3 I'm going to go ahead and sign the Order to Show
4 Cause today. We'll come back in 30 days or so
5 hopefully with the receiver in attendance to see
6 what is going on.

7 MR. DAILEY: Can I ask what you're
8 allowing the receiver to do. Is it just related
9 to the \$600,000; are you allowing him to see my
10 personal assets and finances? I think you need
11 to define that.

12 THE COURT: Let's start with him just
13 seeing regarding the \$600,000. I'm not going to
14 give him a blank check just yet. We'll deal with
15 as far as the \$600,000 is concerned.

16 MR. DRAZIN: Your Honor --

17 MR. DAILEY: I'm not finished, Mr.
18 Drazin.

19 Thank you very much, Judge, for that.
20 We'll submit an order. My other question is, in
21 the last hearing we submitted an order and the
22 Court rejected it telling us to follow the court
23 rules. We need that order entered. It was an
24 order denying motion for summary disposition
25 limiting Blue Cross Blue Shield's claim. I'd

1 like to know how do you want me to submit that
2 order.

3 THE COURT: That was granted last
4 time, was it not? I think Mr. Dailey isn't that
5 something we addressed last time?

6 MR. DAILEY: You did grant it, but
7 didn't enter an order. We need an order. Your
8 court indicated that they were not going to enter
9 the order I submitted. I was just wondering how
10 to get it entered.

11 THE COURT: Hold on. Eric or Debra.

12 THE LAW CLERK: We can do July 28th
13 at 9:30.

14 THE COURT: No, not the date. I need
15 to find out what happened.

16 THE CLERK: On the order I would have
17 to do an investigation.

18 THE COURT: We'll look into that
19 today, Mr. Dailey.

20 MR. DAILEY: Who should I call back
21 to find out about that order?

22 THE COURT: We'll be in touch. Did
23 you get a copy of that order, Mr. Stec?

24 MR. STEC: Yes, sir. It was limited
25 to (inaudible) I agree to that.

1 MR. DAILEY: The order that I
2 submitted, Judge, was more than just that. I was
3 a whole bunch of things that this Court ordered.
4 I can re-submit it if you want.

5 THE COURT: Well, make sure Mr. Stec
6 gets a copy of it first.

7 MR. DAILEY: I'll make sure everybody
8 does. I'll submit it through the MiFile.

9 THE COURT: I'll take a look at it.

10 MR. DRAZIN: Your Honor, if I may, is
11 Mr. Polderman being appointed at attorney
12 Dailey's expense?

13 MR. DAILEY: I object to that, Judge.

14 THE COURT: It is at your expense,
15 Mr. Dailey.

16 MR. DAILEY: It's at my expense?

17 THE COURT: Yes.

18 MR. DAILEY: May I ask the Court the
19 basis upon which I'm required to pay for their
20 expert?

21 THE COURT: Go ahead, Mr. Green.

22 MR. GREEN: The receiver is an arm of
23 the Court. He's not anybody's expert. He does
24 not represent the interest of the parties. He is
25 there as an arm of the Court. For that purpose,

1 as I understand and correct me, your Honor, if
2 I'm wrong, he's there to enforce the Court's
3 order, to get the Court's order complied with
4 that \$600,000 is to be placed into escrow.

5 MR. DAILEY: Your Honor, there's no
6 basis upon which to support me having to pay the
7 cost.

8 THE COURT: The basis that I have is
9 simply I want him to basically help me enforce
10 the order that I signed already. I'm ordering
11 that you pay for the receiver.

12 MR. DAILEY: Your Honor, I'm
13 objecting. I'm asking the Court to --.

14 THE COURT: You can objection all you
15 want, Mr. Dailey. I'm telling you it's at your
16 expense.

17 MR. DAILEY: I understand.

18 THE COURT: Anything else?

19 Eric, give me a date; what's the day
20 that we have?

21 THE CLERK: July 28th at 9:30.

22 MR. DAILEY: Your Honor, my
23 disability goes through August 12th. Can we put
24 it after?

25 THE COURT: Your disability as to

1 what? This is the doctor who told you cannot be
2 at hearings or trials?

3 MR. DAILEY: He told me to avoid
4 hearings and trials. To the extent that I can't
5 adhere to his order, I'd like to. After today's
6 hearing, my voice is going to be shot. Every
7 time I do something like this, it delays me
8 getting better. So I'm asking this Court to put
9 it at the end of August so I can get through
10 that.

11 MR. SULOLLI: Your Honor, this is the
12 same attorney who argued a few minutes ago we can
13 have an evidentiary hearing in two weeks.

14 MR. DAILEY: Your Honor, I'm planning
15 on bringing counsel with me.

16 THE COURT: You can bring one July
17 28th.

18 MR. DAILEY: I'm asking the Court for
19 accommodation for my health condition.

20 THE COURT: Mr. Dailey, I can
21 appreciate your health concerns, but the 28th
22 will give you enough time I think. This is six
23 weeks away from today.

24 MR. DAILEY: Okay, Judge. I'm just
25 trying to do what my doctor told me.

1 THE COURT: I understand and
2 appreciate what you're saying. We'll see you on
3 the 28th at --

4 -- what time do we have, Eric?

5 THE CLERK: 9:30.

6 MR. DAILEY: Will this be by Zoom,
7 Judge?

8 THE COURT: We'll keep you posted. I
9 think I might have everybody come in for that.
10 We're starting to get people back in person.
11 We'll keep you posted. If it's going to be in
12 person, we'll let you guys know.

13 MS. EMERSON: Your Honor, I also have
14 a motion before the Court today. It's our motion
15 to assert a claim against Dailey Law as well as a
16 third-party complaint against Brian Dailey.

17 MR. DAILEY: We would resist that,
18 your Honor. Long time passed to bring a
19 counterclaim. It would be a statute of
20 limitation issue. I object to any amendment to
21 bring in counterclaims.

22 MS. EMERSON: Your Honor, there is no
23 statute of limitations issues pursuant to MCR
24 2.118(A)(2), leave to amend shall be freely
25 granted as justice requires. Alternatively, we

1 should be allowed to amend our answer to assert a
2 counterclaim and third party complaint to conform
3 to the pleadings in this case based upon the
4 information that has arisen with respect to Mr.
5 Dailey's failure to interplead funds as required
6 by this Court. As a reminder, Mr. Dailey filed
7 this case in 2021 asking this Court to determine
8 how funds should be distributed to providers.
9 Thereafter, he refused to interplead any money.

10 He has admitted he has over \$150,000
11 that are a part of the settlement proceeds that
12 he has not even interplead into this court
13 despite the fact he filed this lawsuit requesting
14 that amounts be distributed. There's no
15 prejudice. This information has recently come
16 about at the last hearing. At that last hearing
17 status conference, the Court ordered several
18 parties, including my client M-1 Imaging to amend
19 our answers to attach liens showing that we did,
20 in fact, have proper claim in this case.

21 Based upon the recent court order of
22 amendment we believe there's no prejudice.
23 There's no bad faith as we found this information
24 out recently and continues to develop. It's
25 clear based upon this case being pending for two

1 years and Mr. Dailey failed to interplead any
2 funds, it's our assumption he will not do so.
3 For that reason we'd like to assert a
4 counterclaim against Dailey Law Firm and third
5 party complaint against Brian Dailey.

6 We've attached a copy of our amended
7 answer which includes the counter complaint and
8 third-party complaint to our motion; it's Exhibit
9 B. We request that the Court enter that Exhibit
10 B attached to our motion and otherwise we rest
11 and rely on our motion as filed with this court.
12 Thank you.

13 MR. DAILEY: Your Honor, I
14 respectfully object and ask the Court to deny
15 that relief.

16 THE COURT: Based on what?

17 MR. DAILEY: It's not timely. This
18 has been in place since 2021. There's no
19 counterclaim against Brian Dailey individually.
20 Brian Dailey individually has no responsibility
21 whatsoever. If anything, it's Dailey Law Firm
22 and Dailey Law Firm doesn't have any
23 responsibility except \$155,000. I understand
24 there are different opinions on that, but that is
25 my position. And there is no reason for a

1 counterclaim against attorney Brian Dailey. This
2 is all Dailey Law Firm, and Dailey Law Firm can
3 still assert a statute of limitations. In
4 addition to that Dailey Law Firm has never been
5 involved in a contractual relationship with any
6 of these parties. It's always been Ms. Ingram
7 not Dailey Law Firm or Brian Dailey. There's no
8 basis upon which to allow amendment for
9 counterclaims.

10 MS. EMERSON: Your Honor, pursuant to
11 MCR 2.118(b)(1) amendments are routinely granted
12 to conform to the pleadings in the case or
13 discovery in the case. We recently discovered he
14 continuously fails to interplead funds he had
15 admitted he has. We think based upon that we
16 have a basis to assert a counterclaim regardless
17 it seems like he's arguing to the merits of our
18 counterclaim and third-party complaint. We
19 believe under Michigan Court Rule we have basis
20 to file those claims. Again, those amendments
21 are granted freely as justice requires. We
22 believe justice requires an amendment based on
23 the facts that have developed in this case.

24 MR. DAILEY: Your Honor, briefly,
25 amendments are granted routinely; I agree. But

1 it doesn't breathe life in to a statute of
2 limitations that's expired. It doesn't give
3 liability where there is no contractual liability
4 to begin with. It doesn't create a cause of
5 action. There is no cause of action. This would
6 be a futile amendment. They need to amend their
7 answer (inaudible) which is what this Court
8 ordered when we were before you. In terms of
9 suing Brian Dailey or Dailey Law Firm on any
10 claim, there is no claim. Dailey Law Firm and
11 Brian Dailey never was in any contractual
12 relationship or agreement with any of these
13 parties under any circumstances with one
14 exception, and that is Jody Ingram. And Jody
15 Ingram signed my contingency fee agreements
16 approving what I did. Nobody else has a
17 contractual against me individually or Dailey Law
18 Firm. I would ask the Court to deny that relief.

19 THE COURT: I will decide that later
20 today. Anything else?

21 MR. DAILEY: That's it, Judge.

22 THE COURT: Anything else from anyone
23 else? You all have a good weekend.

24 (Whereupon proceedings concluded.)

25 - - -

1 STATE OF MICHIGAN)

2) SS

3 COUNTY OF WAYNE)

4
5
6 R E P O R T E R ' S C E R T I F I C A T E

7
8 I, Shelee Beard, CSR-5493, do hereby
9 certify that I have transcribed the **ZOOM** proceedings
10 had in the above-entitled matter at the time and place
11 hereinbefore set forth and that the foregoing is a
12 true and correct transcript of proceedings.

13
14
15
16 /s/ Shelee Beard
17 Shelee D. Beard, CSR-5493
18 770 Coleman A. Young Municipal Center
19 Detroit, MI 48226
20 (313) 224-0409
21
22
23
24
25

EXHIBIT “E”

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
(DETROIT)**

In Re:

Dailey Law Firm PC

Debtor.

Case No. 23-45970-mlo

Chapter 11

Hon. Maria L. Oxholm

**ORDER CONFIRMING AUTOMATIC STAY IS NOT IN EFFECT AS TO
INTERPLEADER FUNDS**

Movant John Polderman, pre-petition State Court Appointed Receiver (“Receiver”), having filed a Motion to Confirm Automatic Stay is Not in Effect; Debtor having maintained IOLTA accounts with US Bank, Fifth Third Bank and Huntington Bank (“IOLTA Accounts”), Debtor having also filed an interpleader action in Wayne County Circuit Court (“State Court”), captioned *The Dailey Law Firm vs. Jody Ingram et. al.*, case no. 21-007081 (“Interpleader Case”), and the Debtor having asserted in the Interpleader Case that \$155,135.40 (“Interpleader Funds”) is available to be interpled in the Interpleader Case, due notice and opportunity for hearing having been given; no objection having been filed; and the Court being duly advised in the premises;

IT IS ORDERED that the Court finds that the Interpleader Funds are not assets of the bankruptcy estate, and that the automatic stay does not apply to the Receiver’s collection, receipt or administration of the Interpleader Funds.

IT IS FURTHER ORDERED that the Debtor shall, within three (3) days of

entry of this Order, cause the Interpleader Funds to be deposited with the Receiver, either by certified check or wire transfer.

IT IS FURTHER ORDERED that the Receiver shall hold the Interpleader Funds pending further order of the State Court in the Interpleader Case.

IT IS FURTHER ORDERED that the automatic stay is modified to allow the State Court to hear motions and enter orders as to the disposition, allocation and payment of the Interpleader Funds.

IT IS FURTHER ORDERED that this Order is effective immediately upon entry by this Court notwithstanding the provisions of FRBP 4001(a)(3).